

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: RESTORATION OF AGRICULTURAL LANDS DURING AND AFTER PIPELINE CONSTRUCTION	DOCKET NO. RMU-99-10
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ORDER COMMENCING RULE MAKING

(Issued September 15, 1999)

Pursuant to the authority of IOWA CODE §§ 479.29, 479A.14, 479B.20, 476.1, 476.2, and 17A.4 (1999), the Utilities Board proposes to adopt the rules attached hereto and incorporated by reference. These rules replace IOWA ADMIN. CODE 199-chapter 9. The reasons for proposing the rules are set forth in the attached notice of intended action.

IT IS THEREFORE ORDERED:

1. A rule making proceeding identified as Docket No. RMU-99-10 is commenced for purposes of receiving comments upon the proposed amendments attached to this order.

2. The Executive Secretary is directed to submit for publication in the Iowa Administrative Bulletin a notice in the form attached to and incorporated by reference in this order.

UTILITIES BOARD

/s/ Allan T. Thoms

/s/ Susan J. Frye

ATTEST:

/s/ Judi K. Cooper
Executive Secretary, Deputy

/s/ Diane Munns

Dated at Des Moines, Iowa, this 15th day of September, 1999.

UTILITIES DIVISION [199]

NOTICE OF INTENDED ACTION

Pursuant to Iowa Code sections 17A.4, 476.1, 476.2, 479.29, 479A.14, and 479B.20, the Iowa Utilities Board (Board) gives notice that on September 15, 1999, the Board issued an order in Docket No. RMU-99-10, In re: Restoration of Agricultural Lands During and After Pipeline Construction. The Board is proposing to rescind current 199-IAC Chapter 9 and replace it with a new chapter 9. Currently, Chapter 9 sets the standards for underground improvements, soil conservation structures, and restoration of agricultural lands after pipeline construction. The rules apply to intrastate pipelines, interstate pipelines, and hazardous liquid pipelines.

The Board's proposed revisions of chapter 9 are intended to implement the changes adopted in Senate File 160, including prescribing standards for the restoration of land for agricultural purposes during and after pipeline construction. The legislation amended Iowa Code §§ 479.29, 479.45, 479.48, 479A, 479A.14, 479A.24, 479A.27, 479B.20, 479B.29, and 479B.32.

Senate File 160 amended chapters 479, 479A, and 479B to focus the Board's authority to establish standards for the restoration of agricultural lands during and after pipeline construction. The amendments direct the Board to adopt rules which include a list of items in the statutes. The legislation affirms the county boards of supervisors' authority to inspect projects and gives the county boards of supervisors the authority to file a complaint with the Board in order to seek civil penalties for noncompliance with various requirements. The chapter is also amended to require petitioners for pipeline construction to file a written land restoration plan and provide

copies to all landowners. The statute allows the application of different provisions which are contained in agreements with landowners and defines compensable losses.

In the new chapter 9, the Board sets out a procedure for review of land restoration plans. Those pipeline companies which are subject to chapters 479 479B and, therefore, must file an application for permit shall file a land restoration plan at the time they file an application for permit or application for amendment of permit with the Board. Interstate pipeline companies that are subject to chapter 479A must file a land restoration plan at least 120 days prior to construction in order to allow the Board adequate time to review the plan prior to the commencement of construction. The proposed rules describe the contents of a land restoration plan and then set out detailed requirements for land restoration.

Pursuant to Iowa Code section 479.29(1), the Board will distribute copies of this notice of intended action to each county board of supervisors. This notice will inform them of the opportunity for oral presentation. Because of the numerous issues involved in this proceeding, the Board would like to encourage a free exchange of information and ideas. With that in mind, the Board will select a workshop format for oral presentation of comments. Interested persons shall file statements of position no later than October 28, 1999, by filing an original and ten copies in a form substantially complying with 199 IAC 2.2(2). All written statements should clearly state the author's name and address and should make specific reference to this docket. All communications should be directed to the Executive Secretary, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

The statements should indicate whether the person will participate in the workshop. After receipt of the statements, the Board will prepare an agenda for the workshop and distribute it to all who have filed statements. The contact person for the workshop is Vicki Place who can be reached at (515) 281-6104. The workshop will be scheduled for November 17, 1999, at 10 a.m. in the Utilities Board's Hearing Room, 350 Maple Street, Des Moines, Iowa. Pursuant to 199 IAC 3.7(17A,474), all interested persons may participate in this proceeding. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Utilities Board at (515) 281-5256 in advance of the scheduled date to request that appropriate arrangements be made.

The amendments are intended to implement Iowa Code chapters 479, 479A, and 479B.

The following amendments are proposed:

Item 1. Rescind chapter 9 and adopt the following chapter in lieu thereof:

Chapter 9

RESTORATION OF AGRICULTURAL LANDS DURING AND AFTER PIPELINE CONSTRUCTION

199-9.1(479,479A,479B) General information.

9.1(1) Authority. The standards contained herein are prescribed by the Iowa utilities board pursuant to the authority granted to the board in Iowa Code sections 479.29, 479A.14, and 479B.20, relating to land restoration standards for pipelines.

9.1(2) Purpose. The purpose of this chapter is to establish standards for the restoration of agricultural lands during and after pipeline construction. Agricultural lands disturbed by pipeline construction shall be restored in compliance with these rules.

9.1(3) Definitions. The following words and terms, when used in these rules, shall have the meanings indicated below:

a. "Agricultural land" shall mean:

(1) Land which is presently under cultivation, or

(2) Land which has previously been cultivated and not subsequently developed for nonagricultural purposes, or

(3) Cleared land capable of being cultivated.

b. "Drainage structures" or "underground improvements" means any permanent structure used for draining agricultural lands including tile systems and buried terrace outlets.

c. "Landowner" means a person listed on the tax assessment rolls as responsible for the payment of real estate taxes imposed on the property. The term landowner may also include tenants if the tenant has a property interest in the affected land or the authorized representative of the landowner or tenant.

d. "Pipeline" means any pipe, pipes, or pipelines used for the transportation or transmission of any solid, liquid, or gaseous substance, except water, in intrastate or interstate commerce.

e. *"Pipeline company"* means any person, firm, copartnership, association, corporation, or syndicate engaged in or organized for the purpose of owning, operating, or controlling pipelines.

f. *"Pipeline construction"* means scheduled installation of a new pipeline and replacement or removal of a previously-constructed pipeline, but shall not include normal maintenance or emergency construction.

g. *"Soil conservation practices"* means any land conservation practice recognized by soil conservation agencies including grasslands and grassed waterways, hay land planting, pasture, and timber.

h. *"Soil conservation structures"* means any permanent structure recognized by soil conservation agencies including but not limited to toe walls, drop inlets, grade control works, terraces, levees, and farm ponds.

i. *"Till"* means to loosen the soil in preparation for planting or seeding by plowing, chiseling, discing, or similar means. For the purposes of this chapter, agricultural land planted using no-till planting practices is also considered tilled.

j. *"Topsoil"* means the uppermost part of the soil frequently designated as the plow layer, or the soil depth sometimes referred to as the A horizon. The A horizon means the depth of the soil that is ordinarily moved in tillage, or its equivalent in uncultivated soils.

199-9.2(479, 479A, 479B) Filing of land restoration plans. Land restoration plans shall be prepared pursuant to Iowa Code sections 479.29(9) and 479B.20(9) for pipeline construction projects requiring a permit or an amendment to a permit which

proposes pipeline construction or relocation. Plans for pipeline construction projects requiring a certificate from the federal energy regulatory commission shall be prepared pursuant to Iowa Code section 479A.14(9)

a. Content of plan. A land restoration plan shall include but not be limited to the following:

(1) A brief description of the purpose and nature of the pipeline construction project.

(2) A description of the sequence of events that will occur during pipeline construction.

(3) A description of how compliance with rules 9.4(1)-(10) will be accomplished.

(4) The plan should include the point of contact for landowner inquiries or claims as provided for in rule 9.5.

b. Plan variations. The board may by waiver accept variations from this chapter in such plans if the pipeline company can show good cause and if the alternative methods would restore the land to as good as or better condition than provided for in this chapter.

c. Environmental impact statement and agreements. Preparation of a separate land restoration plan for an interstate natural gas company project subject to federal energy regulatory commission authority may be unnecessary if the requirements of this chapter are substantively satisfied in an environmental impact statement as accepted and modified by the federal certificate issued for the project.

Preparation of a separate land restoration plan may be unnecessary if an agricultural impact mitigation or similar agreement is reached by the pipeline

company and the appropriate agencies of the state of Iowa and the requirements of this chapter are substantively satisfied therein. If an environmental impact statement or agreement is used to fully or partially meet the requirements of a land restoration plan, the statement or agreement shall be referenced in the filing with the board and shall be considered to be, or to be part of, the land restoration plan for purposes of this chapter.

199-9.3(479, 479A, 479B) Procedure for review of plan

9.3(1) A pipeline company that is subject to sections 479.5 or 479B.4 shall file its proposed plan with the board at the time it files its petition for permit pursuant to 199 IAC 10.2, or a petition for amendment to permit which proposes pipeline construction or relocation pursuant to 199 IAC 10.9(2). Review of the land restoration plan will be coincident with the board's review of the application for permit and objections to the proposed plan may be filed as part of the permit proceeding.

9.3(2) A pipeline company that is subject to chapter 479A shall file a proposed land restoration plan no later than 120 days prior to the time the construction project is scheduled to commence.

- a. Any interested person may file an objection on or before 20 days after the date the plan is filed.
- b. The board shall either approve or docket the plan for further investigation within 30 days from the date the plan is filed. If there are material questions of fact, the board will set the plan for hearing.

9.3(3) After the board completes its review, the pipeline company shall provide copies of the plan to all landowners of property that will be disturbed by the construction.

199-99.4(479,479A,479B) Restoration of agricultural lands.

9.4(1) *Topsoil separation and replacement.*

a. Removal. Topsoil removal and replacement in accordance with this rule is required for any open excavation associated with the construction of a pipeline unless otherwise provided in these rules. The existing topsoil layer shall be removed from the trench and the subsoil storage area. In deep soils with more than 12 inches of topsoil, at least 12 inches of topsoil will be removed. In soils with less than 12 inches of topsoil, the entire topsoil layer will be removed. The topsoil and subsoil shall be segregated, stockpiled, and preserved separately during subsequent construction operations. The spoil piles shall have sufficient separation to prevent mixing during the storage period. Topsoil shall not be stored or stockpiled at locations that will be used as a traveled way by construction equipment without the written consent of the landowner.

b. Topsoil removal not required. Topsoil removal is not required where the pipeline is installed by plowing, jacking, boring, or other methods, which do not require the opening of a trench. If provided for in a written agreement with the landowner, topsoil removal is not required if the pipeline can be installed in a trench with a top width of 18 inches or less.

c. *Backfill.* The topsoil shall be replaced so the upper portion of the pipeline excavation and the crowned surface, and the cover layer of the area used for subsoil storage, contain only the topsoil originally removed. The depth of the replaced topsoil shall conform as nearly as possible to the depth removed. Where excavations are made for road, stream, drainage ditch, or other crossings, the original depth of topsoil shall be replaced as nearly as possible.

9.4(2) *Temporary and permanent repair of drain tile.*

a. *Pipeline clearance from drain tile.* Where underground drain tile is encountered, the pipeline shall be installed in such a manner that the permanent tile repair can be installed with at least 12 inches of clearance from the pipeline.

b. *Temporary repair.* Any underground drain tile damaged, cut, or removed shall be temporarily repaired and maintained as necessary to allow for its proper function during construction of the pipeline. If water is flowing through a damaged tile line, temporary repairs shall be made immediately. The temporary repairs shall be maintained in good condition until permanent repairs are made. If tile lines are dry and water is not flowing, temporary repairs are not required if the permanent repair is made within four days of the time the damage occurred. If temporary repair of the line is determined unnecessary, the exposed tile line shall nonetheless be screened or otherwise protected to prevent the entry of foreign material, small animals, etc., into the tile line system.

c. *Marking.* Any underground drain tile damaged, cut, or removed shall be marked by placing a highly visible flag in the trench spoil bank directly over or

opposite such tile. This marker shall not be removed until the tile has been permanently repaired and the repairs have been approved and accepted by the county inspector.

d. Permanent repairs. Tile disturbed or damaged by pipeline construction shall be repaired to its original or better condition. Permanent repairs shall be completed as soon as is practical after the pipeline is installed in the trench and prior to backfilling of the trench over the tile line. Permanent repair and replacement of damaged drain tile shall be performed in accordance with the following requirements:

- (1) All damaged, broken, or cracked tile shall be removed.
- (2) Only unobstructed tile shall be used for replacement.
- (3) The tile furnished for replacement purposes shall be of a quality and size at least equal to that of the tile being replaced.
- (4) Tile shall be replaced so that its original gradient and alignment are restored, except where relocation or rerouting is for angled crossings. Tile lines at a sharp angle to the trench shall be repaired in the manner shown on Drawing No. IUB PL-1.
- (5) The replaced tile shall be firmly supported to prevent loss of gradient or alignment due to soil settlement. The method used shall be comparable to that shown on Drawing No. IUB PL-1.
- (6) Before completing permanent tile repairs, all tile lines shall be examined visually, by probing, or by other appropriate means on both sides of the trench within any work area to check for tile that might have been damaged by construction

equipment. If tile lines are found to be damaged, they must be repaired to operate as well after construction as before construction began.

e. Inspection. Prior to backfilling of the applicable trench, permanent tile repairs shall be inspected for compliance by the county inspector.

f. Backfilling. The backfill surrounding the permanently repaired drain tile shall be completed at the time of the repair and in a manner that assures that any further backfilling will not damage or misalign the repaired section of the tile line. The backfill shall be inspected for compliance by the county inspector.

g. Subsurface drainage. Subsequent to pipeline construction and permanent repair, if it becomes apparent the tile line in the area disturbed by construction is not functioning correctly or that the land adjacent to the pipeline is not draining properly, which can reasonably be attributed to the pipeline construction, the pipeline company shall make further repairs or install additional tile as necessary to restore subsurface drainage.

9.4 (3) *Removal of rocks and debris from the right-of-way.*

a. Removal. The topsoil, when backfilled, and the easement area shall be free of all rock larger than three inches in average diameter not native to the topsoil prior to excavation, unless otherwise provided for in a written agreement. Where rocks over three inches in size are present, their size and frequency shall be similar to adjacent soil not disturbed by construction. The top 24 inches of the trench backfill shall not contain rocks in any greater concentration or size than exist in the adjacent

natural soils. Consolidated rock removed by blasting or mechanical means shall not be placed in the backfill above the natural bedrock profile.

b. Disposal. Rock which cannot remain in or be used as backfill shall be disposed of at locations and in a manner mutually satisfactory to the company and the landowner. Soil from which excess rock has been removed may be used for backfill. All debris attributable to the pipeline construction and related activities shall be removed and disposed of properly. For the purposes of this rule, debris shall include spilled oil, grease, fuel, or other petroleum or chemical products. Such products and any contaminated soil shall be removed for proper disposal.

9.4(4) *Restoration of area of soil compaction.*

a. Agricultural restoration. Agricultural land, including off-right of way access roads traversed by heavy construction equipment, shall be deep tilled to alleviate soil compaction upon completion of construction on the property. If the topsoil was removed from the area to be tilled, the tillage shall precede replacement of the topsoil. At least three passes with the deep tillage equipment shall be made. Tillage shall be at least 18 inches deep in land used for crop production and 12 inches on other lands. Upon agreement, this tillage may be performed by the landowner or tenant using their own equipment.

b. Rutted land restoration. Rutted land shall be graded and tilled until restored to as near as practical to its preconstruction condition. If on land from which topsoil was removed, the rutting shall be remedied before the topsoil is replaced.

9.4(5) *Restoration of terraces, waterways, and other erosion control structures*

Existing soil conservation practices and structures damaged by the construction of a pipeline shall be restored to the line and grade existing at the time of pipeline construction unless otherwise agreed to by the landowner in a written agreement. Any drain lines or flow diversion devices impacted by pipeline construction shall be repaired or modified as needed. Soil used to repair embankments intended to retain water shall be well compacted. Disturbed vegetation shall be reestablished, including a cover crop when appropriate. Restoration of terraces shall be in accordance with Drawing No. IUB PL-2. Such restoration shall be inspected for compliance by the county inspector.

9.4 (6) *Revegetation of untilled land.*

a. Crop production. Agricultural land not in row crop or small grain production at the time of construction, including hay ground and land in conservation or set-aside programs, shall be reseeded, including use of a cover crop when appropriate, following completion of deep tillage and replacement of the topsoil. The seed mix used shall restore the original ground cover unless otherwise requested by the landowner. If the land is to be placed in crop production the following year, paragraph 9.4(6)"b" shall apply.

b. Delayed crop production. Agricultural land used for row crop or small grain production which will not be planted in that calendar year due to the pipeline construction shall be seeded with an appropriate cover crop following replacement of the topsoil and completion of deep tillage. However, cover crop seeding may be delayed if construction is completed too late in the year for a cover crop to become

established, and in such instances is not required if the landowner or tenant proposes to till the land the following year.

9.4(7) *Future installation of drain tile or soil conservation structures.*

a. *Future drain tile.* At locations where the proposed installation of underground drain tile is made known in writing to the company prior to securing of an easement on the property and has been defined by a qualified technician, the pipeline shall be installed at a depth which will permit proper clearance between the pipeline and the proposed tile installation.

b. *Future practices and structures.* At locations where the proposed installation of soil conservation practices and structures is made known in writing to the company prior to the securing of an easement on the property and has been defined by a qualified technician, the pipeline shall be installed at a depth which will allow for future installation of such soil conservation practices and structures and retain the integrity of the pipeline.

9.4(8) *Restoration of land slope and contour.* Upon completion of construction, the slope, contour, grade, and drainage pattern of the disturbed area shall be restored as nearly as possible to its preconstruction condition. However, the trench may be crowned to allow for anticipated settlement of the backfill. Excessive or insufficient settlement of the trench area, which visibly affects land contour or undesirably alters surface drainage, shall be remediated by means such as regrading and, if necessary, import of appropriate fill material. Disturbed areas in which erosion causes formation of rills or channels, or areas of heavy sediment

deposition, shall be regraded as needed. On steep slopes, methods such as sediment barriers, slope breakers, or mulching shall be used as necessary to control erosion until vegetation can be reestablished.

9.4(9) *Restoration of areas used for field entrances and temporary roads.* Upon completion of construction, field entrances or temporary roads built as part of the construction project shall be removed and the land made suitable for return to its previous use. Areas affected shall be regraded as required by subrule 9.4(8) and deep tilled as required by subrule 9.4(4). If by agreement or at landowner request a field entrance or road is to be left in place, it shall be left in a graded and serviceable condition.

9.4(10) *Construction in wet conditions.* Construction in wet soil conditions shall not commence or continue at times when or locations where the passage of heavy construction equipment may cause rutting to the extent that the topsoil and subsoil are mixed. To facilitate construction in soft soils, the pipeline company may elect to remove and stockpile the topsoil from the traveled way. Topsoil removal, storage, and replacement shall comply with subrule 9.4(1).

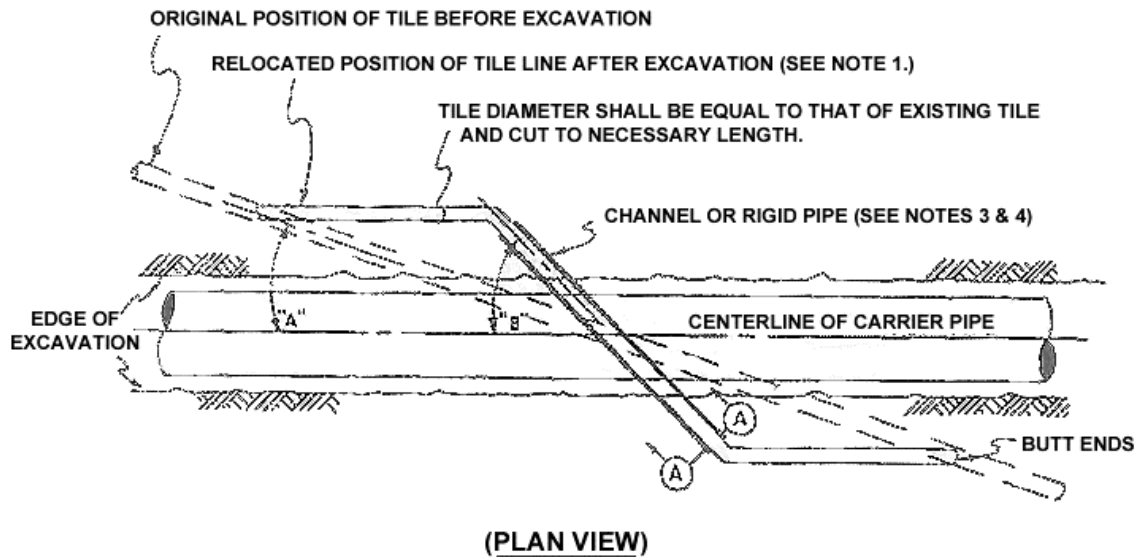
199-9.5(479,479A,479B) Designation of a pipeline company point of contact for landowner inquiries or claims. For each pipeline construction project subject to this chapter, the pipeline company shall designate a point of contact for landowner inquiries or claims. The designation shall include the name of an individual to contact, and a phone number and address through which that person can be reached. This information shall be provided to all landowners of property that will be

disturbed by the pipeline project prior to commencement of construction. Any change in the point of contact shall be promptly communicated to landowners. A designated point of contact shall be available for at least one year following completion of construction.

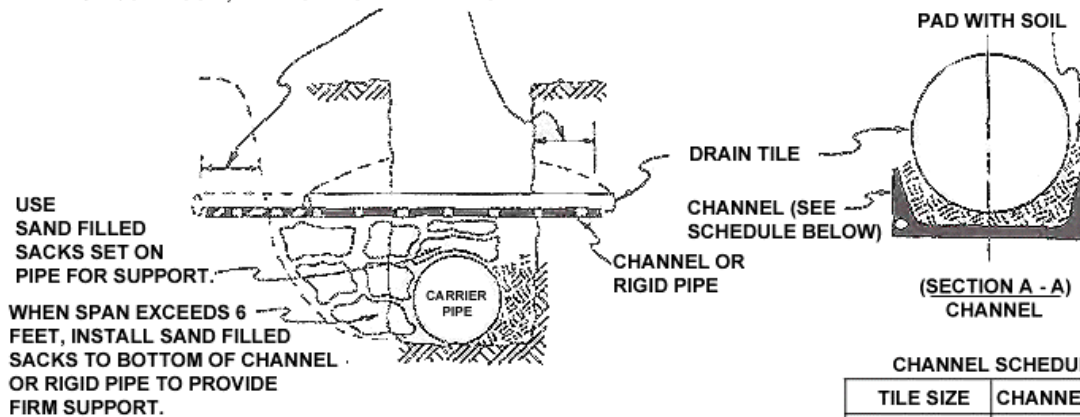
199-9.6(479,479A,479B) Separate agreements. This chapter does not preclude the application of provisions for protecting or restoring property different from those contained in this chapter which are contained in easements or other agreements independently executed by the pipeline company and the landowner. The alternative provision shall not be inconsistent with state law or these rules. The agreement shall be in writing and a copy provided to the county inspector.

199-9.7(479,479A,479B) Enforcement. A pipeline company shall fully cooperate with county inspectors in the performance of their duties under Iowa Code sections 479.29, 479A.14, and 479B.20. If the pipeline company or its contractor does not comply with the requirements of Iowa Code sections 479.29, 479A.14, or 479B.20, with the land restoration plan, or with an independent agreement on land restoration or line location, the county board of supervisors may petition the utilities board for an order requiring corrective action to be taken and/or seeking imposition of civil penalties. Upon receipt of a petition from the county board of supervisors, the board will schedule a hearing and such other procedures as appropriate. The county will be responsible for investigation and for prosecution of the case before the board.

RESTORATION OF DRAIN TILE



2'0" MINIMUM LENGTH OF CHANNEL OR RIGID PIPE SUPPORT
ON SOLID SOIL, EACH SIDE OF EXCAVATION.



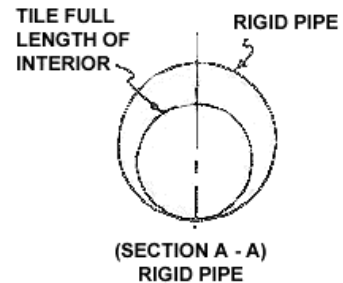
(METHOD OF SUPPORT -- ELEVATION)

CHANNEL SCHEDULE

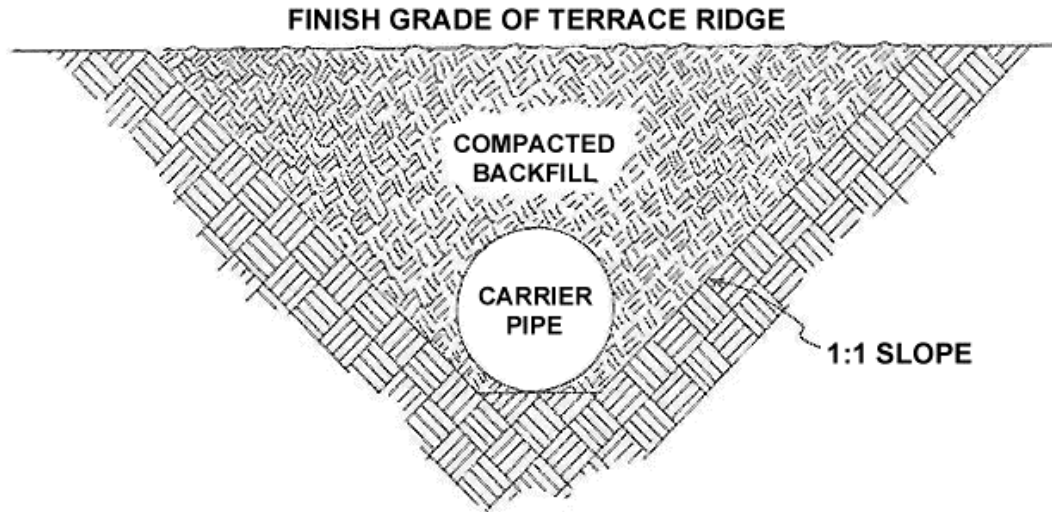
TILE SIZE	CHANNEL SIZE
3"	4" AT 5.4#
4" - 5"	5" AT 6.7#
6" - 9"	7" AT 9.8#
10" & LARGER	10" AT 15.3#

NOTES:

1. TILE SHALL BE RELOCATED AS SHOWN WHEN ANGLE "A" BETWEEN PIPELINE AND ORIGINAL TILE IS LESS THAN 20° UNLESS OTHERWISE AGREED TO BY LANDOWNER AND COMPANY.
2. ANGLE "B" SHALL BE 45° FOR USUAL WIDTHS OF TRENCH. FOR EXTRA WIDTHS, IT MAY BE GREATER.
3. DIAMETER OF RIGID PIPE SHALL BE OF ADEQUATE SIZE TO ALLOW FOR THE INSTALLATION OF THE TILE FOR THE FULL LENGTH OF THE RIGID PIPE.
4. OTHER METHODS OF SUPPORTING DRAIN TILE MAY BE USED IF THE ALTERNATE PROPOSED IS EQUIVALENT IN STRENGTH TO THE CHANNEL SECTIONS SHOWN AND IF APPROVED BY THE LANDOWNER.



RESTORATION OF TERRACE



NOTE:

COMPACTION OF BACKFILL TO BE EQUAL TO THAT OF THE UNDISTURBED ADJACENT SOIL.

IUB PL-2

These rules are intended to implement Iowa Code sections 479.29, 479A.14, and 479B.20.

September 15, 1999

/s/ Allan T. Thoms

Allan T. Thoms
Chairperson